

**From:** [Robert Hammond](#)  
**Subject:** [Non-DoD Source] FOIA Request to Your Command. FOIA Request DON 18- BD6. Data Calls Emails  
**Date:** Saturday, September 22, 2018 6:32:49

---

Robert Hammond  
1828 Wayland Street,  
  
Oakton, VA 22124  
  
perseverance2013@aol.com

September 22, 2018 2017

FOIA Officer

Subject: FOIA Request DON 18- BD6. Data Calls Emails

\*\*\* This Request will be timely for Judicial Review in twenty working days \*\*\*

Dear Sir:

I am submitting this request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 et seq., as amended. If you deny all or any part of this request, please cite each specific exemption you think justifies your decision not to release the information and notify me of appeal procedures available under the law. References cited above apply.

RECORDS SOUGHT VIA FOIA.

1. I am respectfully seeking records in your command's custody of all emails below, adjusted for time zone. This would include any Navy BUMED forwarding of DON FOIA/PA Office emails to your command or forwarding of DON FOIA/PA emails or Navy BUMED emails to your command by any other entity. Emails:

- \* Sent: Tuesday, August 27, 2013 11:58 AM, Subject: DATA CALL - RESPONSE DUE NLT 1200 EDT 29 AUG 2013
- \* Sent: Thursday, January 24, 2013 12:29 PM Subject: DRAFT-----REMINDER: Action Item due Jan 25th -
- \* Sent: Tuesday, October 08, 2013 11:36 AM, Subject: RESPONSE DUE NLT COB WEDNESDAY 10/9/2013 - RE: ONGOING DATA CALL - Sept 16 WNY Event/Aaron Alexis
- \* Sent: Thursday, October 10, 2013 10:57 AM, Subject: FOIA OFFICE STAND DOWN

2. Emails may have been sent from FOIA/PA Office staff, including, but not limited to, the following, whose identities are already in the public domain:

robin.patterson@navy.mil,  
  
DONFOIA-PA@navy.mil  
  
mary.p.shaw@navy.mil,  
  
richard.r.strong@navy.mil <<mailto:richard.r.strong@navy.mil>> ,  
  
donfoia-pa@navy.mil <<mailto:donfoia-pa@navy.mil>>  
  
joshua.portner.ctr@navy.mil,  
  
montant.johnson.ctr@navy.mil,  
  
Raymond.Hartwick.ctr@navy.mil,  
  
montana.johnson.ctr@navy.mil,  
  
richard.r.strong.ctr@navy.mil,  
  
Strong, Richard R CTR OPNAV, DNS-36  
  
robert.miller3.ctr@navy.mil <<mailto:robert.miller3.ctr@navy.mil>> ;

3. Emails may have been sent from Navy BUMED staff, including, but not limited to the following, whose identities are already in the public domain:

Garcia, Della

della.garcia@med.navy.mil,

4. DON JAG has ruled that the identities of FOIA Officers including those which are publicly posted are not exempt from disclosure. See enclosures 1 and 2.

5. Records are likely to be held by FOIA officers and in the agency's MS Outlook data files

6. I am also seeking that a copy of this FOIA Request (which is an agency record) be included as a responsive record integral to my Request.

7. In your reply, please identify your searches, who conducted them, when they were conducted, the manner of searching, the locations searched and the results of your searches.

Requested Format.

I am requesting that documents provided as a single PDF file by return email to perseverance2013@aol.com with: (1) a signed and dated cover letter (citing my personally assigned requester control number); (2) with record page count for all records released records (3) a copy of this request in your reply. I seek records via email in PDF format with an imbedded copy of my requests to (1) impede the agency from not addressing the FOIA Request; (2) impede the Agency from not providing the documents stated in the Agency's letter reply, and (3) make it obvious in any subsequent review what the Agency has or has not done.

This request is distinctly separate from any other. Please do not combine this request with any other request in your reply. I am requesting that each element of the records sought be specifically addressed in the reply.

Agreement to Pay Fees. I agree to pay fees for searching or copying the records up to \$5. If the fees exceed this amount please advise me of the cost before proceeding. I do not believe that there should be any charge for providing these records, as there is public interest in government operations. I am a private individual not seeking documents for commercial use, such that the following applies: "No fees may be charged by any DoD Component if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. With the exception of requesters seeking documents for a commercial use, Components shall provide the first two hours of search time, and the first one hundred pages of duplication without charge." I would note that because I am requesting a PDF file, there should not be a per page copy fee. Also, please note that, should payment become necessary, the Coinage Act of 1965, specifically Section 31 U.S.C. 5103, entitled "Legal tender," states: "United States coins and currency (including Federal reserve notes and circulating notes of Federal reserve banks and national banks) are legal tender for all debts, public charges, taxes, and dues."

PUBLIC INTEREST. The accuracy and integrity of FOIA/PA processes and FOIA reporting are in the public interest. The subject of the requested records concerns "the operations or activities of the government." The disclosure is "likely to contribute" to an understanding of government operations or activities. There is no commercial interest. There is significant public interest. Inaccurate reporting by DOD has already been established. See Enclosure 1, "Whistleblower." Subsequent to my whistleblower activity, several entities admitted to prior false reporting and amended their FY 2017 Annual FOIA Report submissions, stating at pages 25 and 26:

"After reviewing their databases, AF, ARMY, DHA, DLA, NAVY, NSA, and OSD/JS updated the number of appeals pending as of the start of the Fiscal Year."

"After reviewing their databases, AF, ARMY, CENTCOM, DIA, DLA, DSS, DTRA, EUCOM, NAVY, NGA, NGB, NRO, NSA, OSD/JS, and TRANSCOM updated the number of pending requests as of the start of the Fiscal Year." See <https://open.defense.gov/Transparency/FOIA.aspx> <<https://open.defense.gov/Transparency/FOIA.aspx>> .

DOD POLICY – PUBLIC TRUST.

Reference (c) states, "DoD personnel are expected to comply with the FOIA, this Regulation, and DoD FOIA policy in both letter and spirit. This strict adherence is necessary to provide uniformity in the implementation of the DoD FOIA Program and to create conditions that will promote public trust."

PRESERVATION OF RECORDS AND SEARCHES PERFORMED. Please preserve all responsive or potentially responsive records and records of your searches in your FOIA case file until the statutory date for judicial review has passed (should that be necessary) or in accordance with a NARA approved records schedule, if longer. Records of responsive searches would include but not be limited to: Searches conducted for each specific record sought and all other records known to the Agency, including dates, manner of searching, responsible agent or employee conducting each search and the results thereof. NARA GRS 4.2 requires that FOIA and Privacy Act case files be retained for 6 years after final agency action or 3 years after final adjudication by the courts, whichever is later.

## Alteration/DESTRUCTION of Records

Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both. 18 U.S. Code § 1519 - Destruction, alteration, or falsification of records. (Added Pub. L. 107-204, title VIII, §802(a), July 30, 2002, 116 Stat. 800.)

## LEGAL FRAMEWORK OF FOIA

### 1. The definition of "records" includes:

"[A]ll books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them." 44 U.S.C. § 3301 (emphasis supplied).

2. FOIA requires that "each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person" 5 U.S.C. § 552(a)(3)(A).

3. FOIA requires that "each agency shall establish a system to assign an individualized tracking number for each request received that will take longer than ten days to process and provide to each person making a request the tracking number assigned to the request" 5 U.S.C. § 522(a)(7)(A).

4. FOIA requires that each agency shall "establish a telephone line or Internet service that provides information about the status of a request to the person making the request using the assigned tracking number, including the date on which the agency originally received the request; and an estimated date on which the agency will complete action on the request. 5 U.S.C. § 522(a)(7)(B).

5. FOIA also requires federal agencies to make a final determination on FOIA administrative appeals that it receives within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal, unless the agency expressly provides notice to the requester of "unusual circumstances" meriting additional time for responding to a FOIA request. 5 U.S.C. § 552(a)(6)(A)(ii).

6. FOIA expressly provides that a person shall be deemed to have constructively exhausted their administrative remedies if the agency fails to comply with the applicable time limitations provided by 5 U.S.C. § 552(a)(6)(A)(I) - (ii). See also 5 U.S.C. § 552(a)(6)(C).

7. FOIA provides that any person who has not been provided the records requested pursuant to FOIA, after exhausting their administrative remedies, may seek legal redress from the Federal District Court to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.

8. Regarding the names of the FOIA requesters, the courts have held that under the FOIA requesters do not have an expectation of privacy. *Stauss v. IRS*, 516 F. Supp. 1218, 1223 (D.D.C. 1981),

9. Under FOIA, the federal agency has the burden of sustaining its actions. 5 U.S.C. § 552(a)(4)(B).

10. Pursuant to FOIA, a Court may assess attorney fees and litigation costs against the United States if the Plaintiff prevails in an action thereunder. 5 U.S.C. § 552(a)(4)(E).

11. Department of Justice (DOJ) has issued a handbook addressing FOIA Annual Reports. See DOJ, Handbook for Agency Annual Freedom of Information Act Reports, "Disposition of FOIA Requests," (available at [http://www.justice.gov/sites/default/files/oip/pages/attachments/2014/11/04/departement\\_of\\_justice\\_handbook\\_for\\_agency\\_annual\\_freedom\\_of\\_information\\_act\\_reports.pdf](http://www.justice.gov/sites/default/files/oip/pages/attachments/2014/11/04/departement_of_justice_handbook_for_agency_annual_freedom_of_information_act_reports.pdf) <[http://www.justice.gov/sites/default/files/oip/pages/attachments/2014/11/04/departement\\_of\\_justice\\_handbook\\_for\\_agency\\_annual\\_freedom\\_of\\_information\\_act\\_reports.pdf](http://www.justice.gov/sites/default/files/oip/pages/attachments/2014/11/04/departement_of_justice_handbook_for_agency_annual_freedom_of_information_act_reports.pdf)> ) ("DOJ Handbook").

12. Among other things, the DOJ Handbook states, "All requests (perfected and non-perfected), appeals, and consultations that were pending at any time during the relevant fiscal year [October 1st through September 30th] will be captured."

13. The DOJ Handbook also states:

"[E]ach agency is ultimately responsible for the accuracy and completeness of its Annual FOIA Report. It is therefore essential for agencies to take steps that will ensure that they are adequately tracking all of the information necessary to complete the Annual FOIA Report sections detailed below. Agencies that utilize a tracking or case management system for this purpose are responsible for ensuring that the system they are using can produce an accurate Annual FOIA Report that is in compliance with the law and Department of Justice guidance." DOJ Handbook, at 3.

## AGENCY'S BURDEN \_ EXEMPTION 6

a. "The presumption in favor of disclosure is as strong [under Exemption 6] as can be found anywhere in the Act." See *Wash. Post Co. v. HHS*, 690 F.2d 252, 261 (D.C. Cir. 1982).

b. All names and email addresses are all in public domain. The names and email addresses are already in the public domain having been released numerous times. As a general matter, "[o]ne can have no privacy interest in information that is already in the public domain, especially when the person asserting his privacy is himself responsible for placing that information into the public domain. See *Citizens for Responsibility & Ethics in Wash.*, 2012 WL 45499 at \*6; see also Department of Justice, Office of Information Policy, Exemption 6 at 435, [http://www.justice.gov/oip/foia\\_guide09/exemption6.pdf](http://www.justice.gov/oip/foia_guide09/exemption6.pdf) <[http://www.justice.gov/oip/foia\\_guide09/exemption6.pdf](http://www.justice.gov/oip/foia_guide09/exemption6.pdf)> ("Unless the

information has become 'practically obscure'. . . there is generally no expectation of privacy regarding information that is particularly well known or is widely available within the public domain.”).

c. Government misconduct. Government misconduct is at issue with regard FOIA processes and to the potential destruction of records after FOIA requests were received under the guise of records retention. The public interest is particularly high where government misconduct is concerned and (mirroring the way privacy interests are assessed for government employees) “[t]he public interest in learning of a government employee’s misconduct increases as one moves up an agency’s hierarchical ladder. See *Trentadue v. Integrity Comm.*, 501 F.3d 1215, 1234 (10th Cir. 2007). Discussed in my FOIA Request and below.

d. The Agency must articulate any clearly unwarranted invasion of privacy, direct threats to privacy or substantial probability thereof. The U.S. Supreme Court has clarified that the exemption is “directed at threats to privacy more palpable than mere possibilities.” (*Rose*, 425 U.S. at 381 n.19.) and the U.S. Court of Appeals for the D.C. Circuit requires the government to show a “substantial probability that the disclosure will lead to the threatened invasion.

e. Disclosure is specifically authorized by DOD Policy. DoD 5400.11-R, May 14, 2007, C4.2.2. Disclosures Required by FOIA.

f. AMNESTY INTERNATIONAL USA v. C.I.A is irrelevant as a defense based on grade or rank. *Hogan Decl.*, ¶ 3 (“[I]t is the policy of the [DOD] that it will not release, nor authorize any other federal agency to release, lists of names or other personal identifying information of DOD personnel . . . [except the DOD] may release the names, official titles [], and telephone numbers for personnel at the office director level or above, for military officers above the rank of Colonel (Captain in the Navy), and for those officials below the office director level [whose] positions and duties require frequent interaction with the public.”). As shown above, this is not DOD policy. Moreover, DOD has released the redacted information through FOIA numerous times.

g. DOD must Substantial/De Minimis Privacy Interests.

h. Derivative Use. There is a public interest in release of the information in my own and others’ ability to use it to obtain additional information. See *Ray*, 502 U.S. at 178, 179.

I believe that I have adequately described the records that I am seeking. If you believe that my request is unclear, if you have any questions, or if there is anything else that you need from me to complete this request in a timely manner, please contact me in writing, so that I may perfect my request. If you deem that any portion of my request is unclear, answer the remaining portions and I will perfect a request for additional material as needed.

Thank you very much in advance.

With my respect,

/s/

Robert Hammond

References: (a) The Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 et seq., as amended,

(b) Joint publication of U.S. Department of Justice, Executive Office of the President and U.S. General Services Administration of July 2011, “Your Right to Federal Records”

(c) The Privacy Act (“PA”) of 1974, 5 U.S.C. § 552a, et seq., as amended

(d) DoD 5400.11-R, May 14, 2007, Department of Defense Privacy Program

(e) DoD 5400.7-R, September 1998, DoD Freedom of Information Act (FOIA) Program

(f) DoD 5400.11-R, May 14, 2007, Department of Defense Privacy Program

(g) DoD 6025.18-R, Jan. 24, 2003, DoD Health Information Privacy Regulation

(i) GAO Report GAO-12-828 of July 2012, subject Freedom of Information Act

(j) Department of Justice Handbook for Agency Annual Freedom of Information Act Reports